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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/563,392
Filing Date: June 20, 2007
Appellant(s): WORGULL ET AL.

Michael J. Striker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/2/2009 appealing from the Office action mailed 7/1/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

NEW GROUND(S) OF REJECTION

Claims 1, 5-7, and 9, are now also rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler (US Patent No. 5,727,331) in view of '988 (US Patent No. 4,711,988). A rejection discussing the obviousness will be made below.

Claims 2-4 are now also rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler et al. (US Patent No. 5,727,331) in view of '988 (US Patent No. 4,711,988) as applied to

claim 1 above, and further in view of Wilson (US Patent No. 4,629,864). A rejection discussing the obviousness will be made below.

Claims 10-12 are now also rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler et al. (US Patent No. 5,727,331) in view of '988 (US Patent No. 4,711,988) as applied to claim 1 above, and further in view of Berryman (US Patent No. 3,612,824). A rejection discussing the obviousness will be made below.

Claim 7 is now further rejected under 112, 1st paragraph for new matter and under 112, 2nd paragraph for indefiniteness. A rejection discussing the new matter will be made below.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,727,331	THALER	3-1998
4,629,864	WILSON	12-1986
3,612,824	BERRYMAN	10-1971
4,711,988	THALER	12-1987

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Thaler et al. (US Patent No. 5,727,331).

Regarding claim 1, 5-7, 9, Thaler et al. discloses a hand hair dryer (30, fig. 1, col. 2, line 34) comprising: an electric fan (col. 2, line 37) and an electric heater (col. 2, line 38), located in line with the electric fan for generating an air stream from a barrel portion (37, fig. 1), in which the fan is located in a housing portion (13, fig. 1, “vent” col. 2, line 47) and the heater (col. 2, lines 36-38 describing the hair dryer as including a heater though the heater is not shown in fig. 1) is located inside the barrel portion (37, fig. 1), that on the housing portion (13, fig. 1), a first handle grip (11, fig. 1) that has operator control elements (20, fig. 1) is located at an angle of approximately 90° (fig. 1) to the barrel portion (37, fig. 1), wherein the barrel portion (37, fig. 1) is embodied as a second handle grip (10, fig. 1) and a commonly actuatable cold air combination switch (20, fig. 1, “switch to control the air flow rate and/or temperature of the dryer” abstract, lines 11-12) is located between the first handle grip (11, fig. 1) and the second handle grip (10, fig. 1), and is configured to be actuated selectively from the first (11, fig. 1) or second (fig. 4 showing a user’s hand on the second handle) handle grip, using one finger (27, fig. 4), the second handle grip (10, fig. 1 showing the second handle grip being cylindrically shaped) is shaped cylindrically, the first (11, fig. 1) and second (10, fig. 1) handle grips are each provided with a nonslip surface (12, 23, fig. 1), a first cold air switch (120, fig. 5, col. 1, lines 63-65) is located on the first handle grip (111, fig. 5), and a second cold air switch (127, fig. 5) is located on the second handle grip (110, fig. 5), and a pushbutton (20, fig. 1, col. 1, lines 54-65 describing the temperature of the hair dryer being controllable through electrical switches) is provided as the cold air combination switch.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler et al. (US Patent No. 5,727,331) in view of Wilson (US Patent No. 4,629,864).

In regards to claims 2-4, Thaler et al. discloses the claimed invention, except for the second handle grip is heat-insulated, the barrel portion is heat-insulated from the outside, and the second handle grip and the barrel portion are embodied as heat-insulated from the outside. However, Wilson teaches a second handle grip (7, fig. 4) is heat-insulated (19, fig. 4, "insulating sleeve 19" col. 4, line 4), the barrel portion (6, fig. 4) is heat-insulated (19, fig. 4, col. 4, lines 3-4) from the outside, and the second handle grip (7, fig. 4) and the barrel portion (6, fig. 4) are embodied as heat-insulated (19, fig. 4 showing the heat insulation being on the outside of barrel portion 6 and 16, fig. 4, "ribs 16" col. 3, line 64 and col. 2, lines 9-14 describing the ribs as keeping the outer surface much cooler) from the outside in order to make it much cooler for an operator to touch (col. 2, lines 12-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Thaler et al. reference, to include the second handle grip is heat-insulated, the barrel portion is heat-insulated from the outside, and the second handle grip and the barrel portion are embodied as heat-insulated from the outside, as suggested and taught by Wilson, for the purpose of making it much cooler for an operator to touch. The Applicant is combining prior art elements according to known methods to yield

predictable results. The Applicant is combining a hand held dryer having two handle grips as disclosed by Thaler et al. with a hand held dryer having two handle grips where the handle grip on the barrel is heat insulated as taught by Wilson according to known methods to yield the predictable result of the handle grip on the barrel portion being cooler for an operator to touch. One would be motivated to combine Thaler et al. with Wilson because Wilson teaches a hand held dryer with heat-insulation on the barrel portion to make it cooler to an operator's touch which would reduce the likelihood of burning or discomfort from the heat and the barrel portion and second handle grip of Thaler et al. would benefit from heat-insulation in the same way.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler et al. (US Patent No. 5,727,331) in view of Berryman (US Patent No. 3,612,824).

In regards to claims 10, 11, and 12, Thaler et al. discloses the claimed invention, except for a one-legged toggle switch is provided as the cold air combination switch, a two-legged toggle switch is provided as the cold air combination switch, and a centrally located warm-air conduit and a coaxial cold-air conduit are provided in the barrel portion, and the central warm-air conduit is formed by a hollow-cylindrical barrel, in which the heater is located; that the coaxial cold-air conduit is formed by the barrel portion and the central warm-air conduit; that the central warm-air conduit and the coaxial cold-air conduit are acted upon by a cold air stream of the fan, and by means of the heater, a warm air stream outlet is effected out of the central warm-air conduit, and a cold air stream is effected from the coaxial cold-air conduit. However, Berryman teaches a one-legged toggle switch (17, fig. 1) is provided as the cold air combination switch (col. 2, lines 25-26), a centrally located warm-air conduit (77, fig. 3) and a coaxial cold-air conduit (74, fig. 3) are provided in the barrel portion (73, fig. 3), and the central warm-air

conduit (77, fig. 3) is formed by a hollow-cylindrical barrel (71, fig. 3), in which the heater (108, fig. 3) is located; that the coaxial cold-air conduit (74, fig. 3) is formed by the barrel portion (73, fig. 3) and the central warm-air conduit (77, fig. 3); that the central warm-air conduit (77, fig. 3) and the coaxial cold-air conduit (74, fig. 3) are acted upon by a cold air stream of a fan (53, fig. 2), and by means of the heater (108, fig. 3), a warm air stream outlet is effected out of the central warm-air conduit (77, fig. 3 showing arrows indicating the air flow), and a cold air stream is effected from the coaxial cold-air conduit (74, fig. 3 showing arrows indicating the air flow) in order to provide an air blower in which the temperature of the discharging air can be controlled over a wide temperature range (col. 1, lines 26-27). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Thaler et al. reference, to include a one-legged toggle switch is provided as the cold air combination switch, a centrally located warm-air conduit and a coaxial cold-air conduit are provided in the barrel portion, and the central warm-air conduit is formed by a hollow-cylindrical barrel, in which the heater is located; that the coaxial cold-air conduit is formed by the barrel portion and the central warm-air conduit; that the central warm-air conduit and the coaxial cold-air conduit are acted upon by a cold air stream of the fan, and by means of the heater, a warm air stream outlet is effected out of the central warm-air conduit, and a cold air stream is effected from the coaxial cold-air conduit, as suggested and taught by Berryman, for the purpose of providing an air blower in which the temperature of the discharging air can be controlled over a wide temperature range. The Applicant is simply substituting one known element for another to obtain predictable results. The Applicant is simply substituting the known elements of a switch (Thaler et al., 20, fig. 1 and 120, 127, fig. 5 showing multiple switches) and a barrel portion (Thaler et al., 37, fig.

1) having a warm-air conduit as disclosed by Thaler et al. for the known elements of a one-legged toggle switch and a barrel portion having a central warm-air conduit and a coaxial cold-air conduit as taught by Berryman to obtain the predictable result of having a toggle switch and warm-air and cold-air conduits. One would be motivated to combine Thaler et al. with Berryman because Berryman teaches a hand held dryer that can provide more control over the temperature of the discharging air which would improve the hand held dryer of Thaler et al. which also provides control over the temperature of the discharging air.

Thaler et al. as modified by Berryman discloses the claimed invention, except for the toggle switch being a two-legged toggle switch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a switch having two legs rather than one, for the purpose of making it easier for a user to control the switch from different angles, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

NEW GROUND(S) OF REJECTION

Claims 1, 5-7, and 9, are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler (US Patent No. 5,727,331) in view of '988 (US Patent No. 4,711,988).

Regarding claims 1, 5-7, and 9, Thaler et al. discloses a hand hair dryer (30, fig. 1, col. 2, line 34) comprising: an electric fan (col. 2, line 37) and an electric heater (col. 2, line 38), located in line with the electric fan for generating an air stream from a barrel portion (37, fig. 1), in which the fan is located in a housing portion (13, fig. 1, "vent" col. 2, line 47) and the heater (col. 2, lines 36-38 describing the hair dryer as including a heater though the heater is not shown in fig. 1) is located inside the barrel portion (37, fig. 1), that on the housing portion (13, fig. 1), a

first handle grip (11, fig. 1) that has operator control elements (20, fig. 1) is located at an angle of approximately 90° (fig. 1) to the barrel portion (37, fig. 1), wherein the barrel portion (37, fig. 1) is embodied as a second handle grip (10, fig. 1) and a commonly actuatable . . . combination switch (20, fig. 1, “switch to control the air flow rate and/or temperature of the dryer” abstract, lines 11-12) is located between the first handle grip (11, fig. 1) and the second handle grip (10, fig. 1), and is configured to be actuated selectively from the first (11, fig. 1) or second (fig. 4 showing a user’s hand on the second handle) handle grip, using one finger (27, fig. 4), the second handle grip (10, fig. 1 showing the second handle grip being cylindrically shaped) is shaped cylindrically, the first (11, fig. 1) and second (10, fig. 1) handle grips are each provided with a nonslip surface (12, 23, fig. 1), a first . . . switch (120, fig. 5, col. 1, lines 63-65) is located on the first handle grip (111, fig. 5), and a second . . . switch (127, fig. 5) is located on the second handle grip (110, fig. 5), and a pushbutton (20, fig. 1, col. 1, lines 54-65 describing the temperature of the hair dryer being controllable through electrical switches) is provided as the . . . combination switch, except for a cold air combination switch and a cold air switch. However, ‘988 teaches a cold air combination switch (20, fig. 1, “switch 20 is released to the second or cool shot mode position 42 by decreasing the finger pressure on switch 20” col. 3, lines 13-21 describing the normal position 41 for normal drying and a cool shot mode position 42 for generating less heat) and a cold air switch (20, fig. 1, col. 3, lines 13-21) in order to provide an improved hair dryer that can be easily used to quickly heat hair to relax it and the quickly cool air to set it (col. 1, lines 61-64). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Thaler et al. reference, to include a cold air combination switch and a cold air switch, as suggested and taught by ‘988, for the purpose of

providing an improved hair dryer that can be easily used to quickly heat hair to relax it and the quickly cool air to set it. The Applicant is combining prior art elements according to known methods to yield predictable results. The Applicant is combining the prior art elements of a hair dryer having a combination switch, a first switch, and a second switch for controlling the temperature of the hair dryer through associated electrical circuit (col. 2, lines 50-59 explicitly referencing '988 as a teaching reference and incorporating it by reference at col. 2, lines 38-39) as disclosed by Thaler et al. with the prior art elements of a cold air combination switch and a cold air switch as taught by '988 according to known methods to yield the predictable results of a hair dryer having a cold air combination switch, a first cold air switch, and a second cold air switch. One would be motivated to combine Thaler et al. with '988 because '988 teaches an improved hair dryer that can quickly heat hair to relax it and then quickly cool to set it and Thaler et al. explicitly references '988 as teaching a combination switch for controlling the air temperature of a hair dryer, thus providing an improved way of relaxing and setting hair with a hair dryer.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler et al. (US Patent No. 5,727,331) in view of '988 (US Patent No. 4,711,988) as applied to claim 1 above, and further in view of Wilson (US Patent No. 4,629,864).

In regards to claims 2-4, Thaler et al. in view of '988 discloses the claimed invention, except for the second handle grip is heat-insulated, the barrel portion is heat-insulated from the outside, and the second handle grip and the barrel portion are embodied as heat-insulated from the outside. However, Wilson teaches a second handle grip (7, fig. 4) is heat-insulated (19, fig. 4, "insulating sleeve 19" col. 4, line 4), the barrel portion (6, fig. 4) is heat-insulated (19, fig. 4,

col. 4, lines 3-4) from the outside, and the second handle grip (7, fig. 4) and the barrel portion (6, fig. 4) are embodied as heat-insulated (19, fig. 4 showing the heat insulation being on the outside of barrel portion 6 and 16, fig. 4, “ribs 16” col. 3, line 64 and col. 2, lines 9-14 describing the ribs as keeping the outer surface much cooler) from the outside in order to make it much cooler for an operator to touch (col. 2, lines 12-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Thaler et al. in view of ‘988 reference, to include the second handle grip is heat-insulated, the barrel portion is heat-insulated from the outside, and the second handle grip and the barrel portion are embodied as heat-insulated from the outside, as suggested and taught by Wilson, for the purpose of making it much cooler for an operator to touch. The Applicant is combining prior art elements according to known methods to yield predictable results. The Applicant is combining a hand held dryer having two handle grips as disclosed by Thaler et al. with a hand held dryer having two handle grips where the handle grip on the barrel is heat insulated as taught by Wilson according to known methods to yield the predictable result of the handle grip on the barrel portion being cooler for an operator to touch. One would be motivated to combine Thaler et al. with Wilson because Wilson teaches a hand held dryer with heat-insulation on the barrel portion to make it cooler to an operator’s touch which would reduce the likelihood of burning or discomfort from the heat and the barrel portion and second handle grip of Thaler et al. would benefit from heat-insulation in the same way.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler et al. (US Patent No. 5,727,331) in view of ‘988 (US Patent No. 4,711,988) as applied to claim 1 above, and further in view of Berryman (US Patent No. 3,612,824).

In regards to claims 10, 11, and 12, Thaler et al. in view of '988 discloses the claimed invention, except for a one-legged toggle switch is provided as the cold air combination switch, a two-legged toggle switch is provided as the cold air combination switch, and a centrally located warm-air conduit and a coaxial cold-air conduit are provided in the barrel portion, and the central warm-air conduit is formed by a hollow-cylindrical barrel, in which the heater is located; that the coaxial cold-air conduit is formed by the barrel portion and the central warm-air conduit; that the central warm-air conduit and the coaxial cold-air conduit are acted upon by a cold air stream of the fan, and by means of the heater, a warm air stream outlet is effected out of the central warm-air conduit, and a cold air stream is effected from the coaxial cold-air conduit. However, Berryman teaches a one-legged toggle switch (17, fig. 1) is provided as the cold air combination switch (col. 2, lines 25-26), a centrally located warm-air conduit (77, fig. 3) and a coaxial cold-air conduit (74, fig. 3) are provided in the barrel portion (73, fig. 3), and the central warm-air conduit (77, fig. 3) is formed by a hollow-cylindrical barrel (71, fig. 3), in which the heater (108, fig. 3) is located; that the coaxial cold-air conduit (74, fig. 3) is formed by the barrel portion (73, fig. 3) and the central warm-air conduit (77, fig. 3); that the central warm-air conduit (77, fig. 3) and the coaxial cold-air conduit (74, fig. 3) are acted upon by a cold air stream of a fan (53, fig. 2), and by means of the heater (108, fig. 3), a warm air stream outlet is effected out of the central warm-air conduit (77, fig. 3 showing arrows indicating the air flow), and a cold air stream is effected from the coaxial cold-air conduit (74, fig. 3 showing arrows indicating the air flow) in order to provide an air blower in which the temperature of the discharging air can be controlled over a wide temperature range (col. 1, lines 26-27). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Thaler et al. in

view of '988 reference, to include a one-legged toggle switch is provided as the cold air combination switch, a centrally located warm-air conduit and a coaxial cold-air conduit are provided in the barrel portion, and the central warm-air conduit is formed by a hollow-cylindrical barrel, in which the heater is located; that the coaxial cold-air conduit is formed by the barrel portion and the central warm-air conduit; that the central warm-air conduit and the coaxial cold-air conduit are acted upon by a cold air stream of the fan, and by means of the heater, a warm air stream outlet is effected out of the central warm-air conduit, and a cold air stream is effected from the coaxial cold-air conduit, as suggested and taught by Berryman, for the purpose of providing an air blower in which the temperature of the discharging air can be controlled over a wide temperature range. The Applicant is simply substituting one known element for another to obtain predictable results. The Applicant is simply substituting the known elements of a switch (Thaler et al., 20, fig. 1 and 120, 127, fig. 5 showing multiple switches) and a barrel portion (Thaler et al., 37, fig. 1) having a warm-air conduit as disclosed by Thaler et al. for the known elements of a one-legged toggle switch and a barrel portion having a central warm-air conduit and a coaxial cold-air conduit as taught by Berryman to obtain the predictable result of having a toggle switch and warm-air and cold-air conduits. One would be motivated to combine Thaler et al. with Berryman because Berryman teaches a hand held dryer that can provide more control over the temperature of the discharging air which would improve the hand held dryer of Thaler et al. which also provides control over the temperature of the discharging air.

Thaler et al. in view of '988 and Berryman discloses the claimed invention, except for the toggle switch being a two-legged toggle switch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a switch having two legs

rather than one, for the purpose of making it easier for a user to control the switch from different angles, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 7 stands rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites that a commonly actuatable cold air combination switch is located between the first and second handle grips at claim 1, lines 8-9 and claim 7 additionally recites that a first cold air switch is located on the first handle grip and a second cold air switch is located on the second handle grip at claim 7, lines 1-3. Appellant's Figures 6-8 show a commonly actuatable cold air combination switch (16, 16.1, 16.2). Appellant's Figure 1 shows a first cold air switch (10) is located on the first handle grip (8) and a second cold air switch (11) is located on the second handle grip (9). However, Appellant's figures fail to show an embodiment having both the commonly actuatable cold air combination switch located between the first and second handle grips as recited in claim 1 and a first cold air switch located on the first handle grip and a second cold air switch located on the second handle grip recited in claim 7. Therefore,

the Appellant has combined embodiments in a way that was not described in the specification at the time the application was filed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Appellant's application shows a first embodiment in Figure 6 having a commonly actuatable cold air combination switch (16) located between a first handle grip (8) and a second handle grip (9). Appellant's application shows a second embodiment in Figure 1 having a first cold air switch (10) located on a first handle grip (8) and a second cold air switch (11) located on a second handle grip (9). Appellant's application does not show the first and second embodiments being combined. Therefore, claim 7 is indefinite because it recites a first cold air switch is located on the first handle grip and a second cold air switch is located on the second handle grip while claim 1 provided a commonly actuatable cold air combination switch is located between the first handle grip and the second handle grip.

END OF NEW GROUND(S) OF REJECTION

(10) Response to Argument

A. Claim 1

Whether claim 1 is unpatentable under 35 U.S.C. § 102(b) as being anticipated by Thaler et al. (US 5,727,331).

1. Thaler does not disclose a commonly actuatable cold air combination switch.

Appellants argue that claim 1 recites a switch that is “commonly actuatable” and that one of ordinary skill in the art would reasonably interpret this, in the context of the claim, to mean that the switch is actuated commonly (in a common way) from both handle grips. Furthermore, Appellants argue that one of ordinary skill in the art would understand that the switch is actuated in the same (common) manner from both handles using one finger. Finally, Appellants argue that Thaler does not disclose a commonly actuatable cold air combination switch located between first and second handle grips but rather two separate, mechanically linked switches. This is not persuasive. Appellants argue that the claimed hand hair dryer should be given a narrower meaning than construed by the Office. In the context of claim 1 it is clear that a cold air combination switch is to be commonly actuatable by a user while the user's hand is on either a first handle grip or a second handle grip. This was reasonably interpreted to mean that a commonly actuatable cold air combination switch (20) is located between a first handle grip (11) and a second handle grip (10) and is configured to be actuated selectively from the first or second handle grips (11, 10) using one finger (27). The cold air combination switch (20) moves in a common way or in the same manner as shown by an arrow (61) when the cold air combination switch (20) is actuated from either the first (11) or second (10) handle grip. Thaler states that the “trigger 20 is located so that it can be moved in the direction of arrow 61 with one

finger when holding the dryer 30 by the handle 11” (column 2, lines 57-59) and that a user holding the barrel (10) “activates the trigger 20 by moving it in the direction of the arrow 61” (column 3, lines 24-32). Figure 4 shows the commonly actuatable cold air combination switch (20) in its activated position using one finger (27) when holding the dryer by the second handle grip (10). The Appellants statement that “There is no mention in Thaler of a commonly actuatable switch or a commonly actuatable switch that can be selectively actuated by one finger from a first and second handle grips” mischaracterizes Thaler. Therefore, “commonly actuatable” in the context of claim 1 was reasonably interpreted to include a cold air combination switch that moves in a common direction when actuated from either the first or second handle grips.

Thaler discloses only one commonly actuatable cold air combination switch (20) as shown in Figure 4. Thaler states that the switch (20) controls the air temperature of the hair dryer through associated electrical circuitry (column 2, lines 50-53). Furthermore, the commonly actuatable cold air combination switch (20) is commonly actuatable using one finger while holding a first handle grip (11) and commonly actuatable using one finger (27) while holding a second handle grip (10). Therefore, the switch (20) is a commonly actuatable cold air combination switch (20) because it is actuatable from the first (11) or second (10) handle grips and it has associated electrical circuitry to control the air temperature of the hair dryer. In contrast, the collar arm (23) is not a second commonly actuatable cold air combination switch because it cannot be actuated from the first handle grip (11). Additionally, the collar arm (23) fails to be a second cold air combination switch because it lacks the necessary associated

electrical circuitry to control the air temperature of the hair dryer. Therefore, collar arm (23) is not a second cold air combination switch.

2. Thaler does not disclose a cold air combination switch located between first and second handle grips.

Appellants argue that the limitation of a commonly actuatable cold air combination switch located between first and second handle grips means that the commonly actuatable cold air combination switch is not located on either handle grip but between them. This is not persuasive. Thaler discloses a commonly actuatable cold air combination switch (20) located between first (11) and second (10) handle grips. The claim limitation does not exclude a commonly actuatable cold air combination switch from being located on either the first or the second handle grips. A visual inspection of Figure 1 shows that the commonly actuatable cold air combination switch (20) is located between the first handle grip (11) and the second handle grip (10). Therefore, Thaler discloses a commonly actuatable cold air combination switch located between first and second handle grips.

3. Thaler does not disclose a commonly actuatable cold air combination switch configured to be actuated selectively from the first or second handle grip using one finger.

Appellants argue that claim 1 recites a cold air switch that is "commonly actuatable" and configured to be "actuated selectively (...) using one finger" and that one of ordinary skill in the art would, for example, not interpret "using one finger" as equivalent to "using one finger and a lever" or "using one finger and a spring." Appellants further argue that this is not equivalent to actuating trigger switch (20) with one finger because it requires a mechanism in addition to the finger to actuate trigger (20). Finally, Appellants argue that any "argument that using one finger

27 to move a collar arm 23 and, via levers, to actuate trigger switch 20 anticipates 'a commonly actuatable cold air combination switch (...) configured to be actuated selectively from the first or second handle grip (...) using one finger' contradicts the ordinary and customary meaning of 'actuatable using one finger.'". This is not persuasive. Thaler discloses in Figure 1 a commonly actuatable cold air combination switch (20) that is actuatable from a first handle grip (11) using one finger (column 2, lines 57-59). Additionally, Thaler discloses in Figure 4 a commonly actuatable cold air combination switch (20) actuatable from a second handle grip (10) using one finger (27). Thaler's description of Figure 4 in column 3, lines 58-63, discloses that the commonly actuatable cold air combination switch (20) is configured to be actuated selectively using one finger (27). Thaler expressly discloses using one finger to selectively actuate a commonly actuatable cold air combination switch from first or second handle grips. Finally, the commonly actuatable cold air combination switch configured to be actuated selectively from the first or second handle grips using one finger without the use of a lever as argued by Appellants is not claimed such that the claims are defined over the prior art. Specification meanings should be recited in the claim such that the claims define the invention over the prior art. Thaler has been consistently used as a 35 U.S.C. § 102(b) reference with regard to claim 1 throughout prosecution and the Appellants have failed to amend claim 1 to define over this highly relevant prior art reference. Therefore, Thaler does disclose a commonly actuatable cold air combination switch configured to be actuated selectively from the first or second handle grips using one finger.

4. Thaler does not disclose a commonly actuatable cold air combination switch (16, 16.1, 16.2) is located between the first handle grip (8) and the second handle grip (9), and is configured to be actuated selectively from the first or second handle grip 8, 9, using one finger.

Appellants argue that for the reasons provided in sections 1- 3, Thaler does not disclose a commonly actuatable cold air combination switch (16, 16.1, 16.2) is located between the first handle grip (8) and the second handle grip (9), and is configured to be actuated selectively from the first or second handle grip (8, 9), using one finger. Additionally, Appellants argue that the Examiner has interpreted the Thaler patent in a way that is directly contradicted by Thaler because Thaler overcomes a disadvantage of the prior art by providing a hair dryer with two switches that may comprise one electrical switch on the pistol grip mechanically coupled to a mechanical switch on the barrel or a first electrical switch on the pistol grip and a second electrical switch located on the barrel. That Thaler does not disclose any commonly actuatable switch that is configured to be actuated by one finger of a hand holding the dryer by a grip on the handle or a grip on the barrel. Finally, that Thaler overcomes a disadvantage of the prior art by providing a hair dryer with two switches, both of which are located on the grips by which the dryer is held and actuated only by a finger on the hand that holds the grip on which the switch is located and that Appellants have chosen a course that is distinct and away from the teachings of Thaler because Appellants have placed a switch between the two grips and thereby eliminating the need for separate switches, one on each handle grip. This is not persuasive. Appellants arguments provided in sections 1-3 have not been found to be persuasive as stated above. Additionally, as stated above in section 1, Thaler discloses only one commonly actuatable cold air combination switch (20). The commonly actuatable cold air combination switch (20) is

commonly actuatable using one finger while holding a first handle grip (11) and commonly actuatable using one finger (27) while holding a second handle grip (10). In contrast, the collar arm (23) is not a second commonly actuatable cold air combination switch because it cannot be actuated from the first handle grip (11) and it lacks the necessary associated electrical circuitry to control the air temperature of the hair dryer. Therefore, Thaler does disclose a commonly actuatable cold air combination switch is located between the first handle grip and the second handle grip and is configured to be actuated selectively from the first or second handle grip using one finger.

B. Claims 2-4

Whether claims 2-4 are unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Thaler et al. (US 5,727,331) in view of Wilson (US 4,629,864).

Appellants argue that because claims 2-4 depend from and include the limitations recited in claim 1, the arguments against the rejection of claim 1 under 35 U.S.C. § 102(b) and a hypothetical rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Thaler, also apply to claims 2-4. Additionally, Appellants argue that one of ordinary skill in the art would have had no motivation to modify the Thaler hair dryer to insulate the barrel, barrel portion, or barrel handle grip. That Figure 4 in Thaler clearly shows an operator holding the hair dryer while in operation and the disclosure makes no reference whatsoever that could indicate a need to cool the barrel for any reason. Finally, Appellants argue that the heat gun taught of Wilson requires higher temperatures and that consequently, one of ordinary skill in the art reading both Thaler and Wilson would have no reason to modify Thaler by insulating the barrel. This is not persuasive. For the reasons stated above, the rejection of claim 1 was with

appropriate basis and therefore the rejection of claims 2-4 should not be withdrawn for depending from claim 1. Additionally, as stated in the Office action, Wilson taught making a barrel portion heat insulated in order to make it much cooler for an operator to touch (column 2, lines 12-14). The Office action further stated that “The Applicant is combining prior art elements according to known methods to yield predictable results. The Applicant is combining a hand held dryer having two handle grips as disclosed by Thaler et al. with a hand held dryer having two handle grips where the handle grip on the barrel is heat insulated as taught by Wilson according to known methods to yield the predictable result of the handle grip on the barrel portion being cooler for an operator to touch. One would be motivated to combine Thaler et al. with Wilson because Wilson teaches a hand held dryer with heat-insulation on the barrel portion to make it cooler to an operator’s touch which would reduce the likelihood of burning or discomfort from the heat and the barrel portion and second handle grip of Thaler et al. would benefit from heat-insulation in the same way.” The rejection makes clear that one would be motivated to combine Thaler with Wilson because Wilson teaches insulating the barrel to make it cooler to an operator’s touch and Thaler would benefit from insulation in the same way. Finally, the barrel portion of Thaler would not need to be “uncomfortably warm for an operator to touch” as Appellants suggest for one to be motivated to provide a barrel portion that is cooler for an operator to touch. Therefore, claims 2-4 are unpatentable over Thaler in view of Wilson.

C. Claim 5

The rejection of claim 5 under 35 U.S.C. § 102(b) as allegedly being anticipated by Thaler et al. (US 5,727,331) the decision of the Examiner to finally reject this claim should be reversed, and the application should be remanded to the Examiner.

Appellants argue that because claim 5 depends from and includes the limitations recited in claim 1, the rejection of claim 5 is without appropriate basis for at least the reasons set forth by Appellants with respect to claim 1. This is not persuasive. For the reasons stated above, the rejection of claim 1 was with appropriate basis and therefore the rejection of claim 5 should not be withdrawn for depending from claim 1.

D. Claim 6

The rejection of claim 6 under 35 U.S.C. § 102(b) as allegedly being anticipated by Thaler et al. (US 5,727,331), the decision of the Examiner to finally reject this claim should be reversed, and the application should be remanded to the Examiner.

Appellants argue that because claim 6 depends from and includes the limitations recited in claim 1, the rejection of claim 6 is without appropriate basis for at least the reasons set forth by Appellants with respect to claim 1. Additionally, Appellants argue that the rejection of claim 6 citing elements (12) and (23) as disclosing a first handle grip (11) and second handle grip (10) each provided with a nonslip surface was in error because reference element (12) is identified as a power switch and reference element (23) is identified as a collar arm. That the phrase "provided with a nonslip surface" would, in the context of the claim, be understood to mean that a grip is provided with a surface that has the property of preventing slipping when the hair dryer is held by the grip and that a nonslip surface is not an inherent property of a power switch or a collar arm. Finally, Appellants argue that a power switch (12) is not a grip and does not provide the first handle grip (11) with a nonslip surface and similarly that the collar arm (23) does not inherently provide the second handle grip (10) with a nonslip surface. This is not persuasive. For the reasons stated above, the rejection of claim 1 was with appropriate basis and therefore

the rejection of claim 6 should not be withdrawn for depending from claim 1. Additionally, the first handle grip (11) has a power switch (12) which is shown in Figure 1 as having a textured surface. Thaler states that the power switch (12) is a sliding switch at column 2, lines 41-46. The power switch (12) inherently forms a part of the first handle grip (11) as shown in Figure 1, the power switch (12) is shown having a textured surface, and the power switch (12) would require that the surface be nonslip in order for a user to slide the power switch (12). Finally, the second handle grip (10) has a collar arm (23) where both the second handle grip (10) and the collar arm (23) are held by a user as shown in Figure 4. Thaler explicitly states that "collar arm 23 can be textured on the side opposite the barrel 10, making it easier for the user to move the collar arm 23" at column 3, lines 42-44. Thaler also describes the collar arm (23) forming a grip for the hand or finger of a user holding the dryer to easily move the collar arm with a single finger at column 3, lines 38-42. Therefore, the rejection of claim 6 under 35 U.S.C. § 102(b) as being anticipated by Thaler was appropriate.

E. Claim 7

The rejection of claim 7 under 35 U.S.C. § 102(b) as allegedly being anticipated by Thaler et al. (US 5,727,331), the decision of the Examiner to finally reject this claim should be reversed, and the application should be remanded to the Examiner.

Appellants argue that claim 7 depends from and includes the limitations recited in claim 1 and therefore, the rejection of claim 7 is without appropriate basis for at least the reasons set forth by Appellants with respect to claim 1. This is not persuasive. For the reasons stated above, the rejection of claim 1 was with appropriate basis and therefore the rejection of claim 7 should not be withdrawn for depending from claim 1.

F. Claim 9

The rejection of claim 9 under 35 U.S.C. § 102(b) as allegedly being anticipated by Thaler et al. (US 5,727,331), the decision of the Examiner to finally reject this claim should be reversed, and the application should be remanded to the Examiner.

Appellants argue that claim 9 depends from and includes the limitations recited in claim 1 and therefore, the rejection of claim 9 was without appropriate basis for at least the reasons set forth by Appellants with respect to claim 1. This is not persuasive. For the reasons stated above, the rejection of claim 1 was with appropriate basis and therefore the rejection of claim 9 should not be withdrawn for depending from claim 1.

G. Claims 10 and 11

Whether claims 10 and 11 are unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Thaler et al. (US 5,727,331) in view of Berryman (US 3,612,824).

Appellants argue that because claims 10 and 11 depend from and include the limitations recited in claim 1, the rejection of claims 10 and 11 are without appropriate basis for the reasons provided in the arguments against the rejection of claim 1. Additionally, Appellants argue that one of ordinary skill would have had no motivation to replace the spring biased trigger (20) in Thaler's hair dryer with a toggle switch because doing so would render the Thaler hair dryer inoperable for its intended purpose. That Thaler discloses that a collar and trigger configured and positioned so that moving the top of the collar will rotate the collar about pivot shafts and bottom of the collar includes a lip that pushes the trigger. Finally, Appellants argue that if one were to replace the spring biased trigger switch with a conventional toggle switch according to Berryman, the lip would move the toggle switch in one direction but, not being spring-biased, the

toggle switch would not return to the position shown in Figure 1 and as a consequence, the airflow temperature could not be controlled from a hand on either grip. This is not found to be persuasive. For the reasons stated above, the rejection of claim 1 was with appropriate basis and therefore the rejection of claims 10 and 11 should not be withdrawn for depending from claim 1. Additionally, the rejection of claims 10 and 11 under 35 U.S.C. § 103(a) over Thaler in view of Berryman stated that the "Applicant is simply substituting the known elements of a switch (Thaler et al., 20, fig. 1 and 120, 127, fig. 5 showing multiple switches) and a barrel portion (Thaler et al., 37, fig. 1) having a warm-air conduit as disclosed by Thaler et al. for the known elements of a one-legged toggle switch and a barrel portion having a central warm-air conduit and a coaxial cold-air conduit as taught by Berryman to obtain the predictable result of having a toggle switch and warm-air and cold-air conduits. One would be motivated to combine Thaler et al. with Berryman because Berryman teaches a hand held dryer that can provide more control over the temperature of the discharging air which would improve the hand held dryer of Thaler et al. which also provides control over the temperature of the discharging air." Thaler states that the "trigger 20 is spring biased so that it returns to the position shown in FIG. 1 when not depressed by the collar arm 23" (column 3, lines 35-37). In substituting the switch shaped as a trigger for a switch shaped as a toggle it would be obvious to a person having ordinary skill in the art that Thaler requires that the switch, whether a trigger or a toggle, must be spring biased. Finally, even if the spring biased trigger was replaced with a toggle that was not spring biased, such a modification would not render the Thaler hair dryer inoperable for its intended purpose. The hair dryer would continue to blow a stream of hot air until the commonly actuatable cold air combination switch was actuated resulting in the hair dryer blowing a stream of cooler air. The

hair dryer could be returned to blowing a stream of hot air by returning the toggle to its original position. Therefore, claims 10 and 11 remain unpatentable over Thaler in view of Berryman.

H. Claim 12

Whether claim 12 is unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Thaler et al. (US 5,727,331) in view of Berryman (US 3,612,824).

Appellants argue that because claim 12 depends from and includes the limitations recited in claim 1, the rejection of claim 12 should be withdrawn for the reasons provided in the arguments against the rejection of claim 1. This is not found persuasive. For the reasons stated above, the rejection of claim 1 was with appropriate basis and therefore the rejection of claim 12 should not be withdrawn for depending from claim 1.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of

rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Corey Hall/

Examiner, Art Unit 3743

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/KAREN M. YOUNG/

Director, Technology Center 3700

Conferees:

/Kenneth B Rinchart/

Supervisory Patent Examiner, Art Unit 3743

/Greg Vidovich/

TQAS, TC 3700